

R590. Insurance, Administration. *(Effective 10-30-2014)*

R590-170. Fiduciary and Trust Account Obligations.

R590-170-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code under Sections 31A-23a-406, 31A-23a-409, 31A-23a-410, 31A-23a-411.1, 31A-23a-412 and 31A-25-305 authorizing the commissioner to establish by rule, records to be kept by licensees.

R590-170-2. Purpose and Scope.

(1) The purpose of this rule is to set minimum standards that shall be followed for fiduciary and trust account obligations pursuant to Sections 31A-23a-406, 31A-23a-409 and 31A-25-305.

(2) This rule applies to all Chapter 31A-23a and Chapter 31A-25 licensees holding funds in a fiduciary capacity.

R590-170-3. Definitions.

For the purposes of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and the following:

(1) "Trust Account" means a checking or savings account where funds are held in a fiduciary capacity.

(2) "Accounts Receivable" means premiums, fees, or taxes invoiced by a licensee.

(3) "Accounts Payable" means premiums or fees due insurers that a licensee is responsible for invoicing and collecting from insureds on behalf of insurers and licensees and premium taxes due taxing entities.

(4) "Licensee" means a licensee under Chapters 31A-23a and 31A-25.

R590-170-4. Establishing the Trust Account.

(1) All records relating to a trust account shall be identified with the wording "Trust Account" or words of similar import, including "premium fund account." These records include checks, bank statements, general ledgers and records retained by the bank pertaining to the trust account.

(2) All trust accounts shall be established with a Federal Employer Identification Number or a Social Security Number.

(3) A trust account shall be separate and distinct from operating and personal accounts, i.e., a separate account number, a separate account register, and different checks, deposit and withdrawal slips.

(4) A non-licensee may not be a signator on a licensee's trust account, unless the non-licensee signatory is an employee of the licensee and has specific responsibility for the licensee's trust account.

R590-170-5. Maintaining the Trust Account.

(1) Funds deposited into a trust account shall be limited to: premiums which may include commissions; return premiums; fees or taxes paid with premiums; financed premiums; funds held pursuant to a third party administrator contract; funds deposited with a title

insurance agent in connection with any escrow settlement or closing, amounts necessary to cover bank charges on the trust account; and interest on the trust account, except as provided under Subsection 31A-23a-406(2)(b).

(2) Disbursements from a trust account shall be limited to: premiums paid to insurers; return premiums to policyholders; transfer of commissions and fees; fees or taxes collected with premiums paid to insurers or taxing authority; funds paid pursuant to a third party administrator contract; funds disbursed by a title insurance agent in connection with any escrow settlement or closing; and the transfer of accrued interest.

(3) Personal or business expenses may not be paid from a trust account, even if sufficient commissions exist in the account to cover these expenses.

(4) Commissions may not be disbursed from a trust account prior to the beginning of the policy period for which the premium has been collected.

(5) Commissions attributed to premiums and fees collected must be disbursed from a trust account on a date not later than the first business day of the calendar quarter after the end of the policy period for which the funds were collected.

(6) Premiums due insurers may not be paid from a trust account unless the premiums directly relating to the amount due have been deposited into, and are being held in, the trust account, or unless funds have been retained in the trust account consistent with Subsection 5 above, or placed by a licensee into the trust account to finance premiums on behalf of insureds.

(7) Premiums financed by a licensee must be accounted for as a loan with interest charged at no less than the statutory rate for any loan exceeding 90 days, pursuant to Section 31A-23a-404.

R590-170-6. Insurers' Access to Trust Accounts.

(1) Insurer access to licensee trust funds is not prohibited by the trust relationship; however, licensees must take reasonable steps to assure trust funds are protected from misappropriation by limiting access to those trust funds.

(2) An insurer desiring to access funds in a licensee's trust account may do so if:

(a) the contract between the insurer and the licensee allows electronic fund transfers into or out of the licensee's trust account:

(i) expressly permits the insurer to withdraw only the amount authorized by the licensee for each transaction; and

(ii) specific authorization from the licensee of the amount to be withdrawn from the licensee's trust account must be received by the insurer prior to the withdrawal; or

(b) the licensee provides the insurer electronic funds transfer into or out of a separate trust account set up solely for trust funds deposited for that insurer.

(3) By implementing electronic funds transfers from a licensee's trust account, the insurer accepts the commissioner's right to oversight of all electronic funds transfers between the insurer and licensee.

(4) Insurers utilizing electronic funds transfer contracts will annually report to the commissioner the name of each licensee with

whom they have such contracts.

(a) The report is due January 15 of each year.

(b) The report will include the name and address of each licensee and the line of business involved, i.e. personal lines, commercial lines, health, life, etc.

R590-170-7. Accounting Records to be Maintained.

(1) Bank statements for trust accounts shall be reconciled monthly.

(2) An accounts receivable report showing credits and debits shall be maintained and reconciled monthly. This report must list, at a minimum, the account name and the amount and date due for each receivable. The sum of all receivables shall be shown on the report. Receivables and their sums that are over 90 days old shall be shown separately on the report.

(3) An accounts payable report showing the status of each account shall be maintained and reconciled monthly.

(4) Adequate records shall be maintained to establish ownership of all funds in the trust account: from whom they were received; and for whom they are held.

(5) Trust account registers shall maintain a running balance.

(6) All accounting records relating to the business of insurance shall be maintained in a manner that facilitates an audit.

R590-170-8. Insurer Responsibility.

Insurers and their managing general agents shall provide a written report to the insurance commissioner within 15 days:

(1) if a licensee fails to pay an account payable within 30 days of the due date. This does not apply where a legitimate dispute exists regarding the account payable if the licensee has properly notified the insurer of any disputed items and has provided documentation supporting that position; or

(2) if a licensee issues a check that when presented at the bank is not honored or is returned because of insufficient funds.

R590-170-9. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid such invalidity will not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance

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Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-406; 31A-23a-409; 31A-23a-412; 31A-25-305